

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

ROBERT L. CITROEN, LAW CORP.,  
Plaintiff,  
vs.  
MICRON OPTICS, INC.,  
Defendant.

3:16-cv-00570-RCJ-WGC

## ORDER

This case arises out of the alleged breach of an assigned settlement agreement. Pending before the Court are two motions for summary judgment.

## I. FACTS AND PROCEDURAL HISTORY

## A. Facts Alleged in the Verified Complaint

As of April 1, 2014, Plaintiff Robert L. Citroen, Law Corp. (“RLC”) and Defendant Micron Optics, Inc. (“Micron”) were parties to a Stock Purchase Agreement (“the Agreement”). (Compl. ¶ 10, ECF No. 1-1, at 4). Under the Agreement, Micron was to pay RLC \$12,500 per quarter for ten years. (*Id.* ¶ 12). Micron made seven payments from July 1, 2014 to January 1, 2016 but failed to make the April 1, 2016 payment or any payment thereafter. (*Id.* ¶ 13).

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1           **B.       Facts Alleged in the Counterclaim**

2           **1.       Citroen’s Business Interests**

3           Counterdefendant Robert L. Citroen was a member of Micron’s board of directors since  
4 sometime prior to 2000 until November 4, 2011. (*See Answer & Countercl.* ¶ 12, ECF No. 5). In  
5 or around 2004, Micron Optics International A.G. (“MOIAG”) was formed as a Liberian entity  
6 to resell Micron’s products in Asia. (*Id.* ¶ 14). MOIAG’s stock was held equally by Karlsson &  
7 Bergkvist (Schweiz) A.B. (“K&B”) and Metallikon A.G. (“Metallikon”) until 2014. (*Id.*). K&B  
8 is a Swiss entity controlled by Andrei Csipkes and owned by Csipkes’s mother, and Metallikon  
9 is a Liberian entity owned or controlled by Citroen. (*Id.* ¶¶ 15–16). Csipkes was Micron’s Chief  
10 Operating Officer from 2000 to 2015. (*Id.* ¶ 19). Citroen failed to disclose his interest in  
11 Metallikon or Csipkes’s interest in K&B to Micron’s officers, directors, or shareholders. (*Id.*  
12 ¶ 17). MOIAG profited from its relation with Micron and distributed those profits to its  
13 shareholders Metallikon and K&B. (*Id.* ¶ 18). As owner or controller of Metallikon, a  
14 shareholder of MOIAG, Citroen profited when MOIAG did while also serving as a director of  
15 and legal counsel to Micron. (*Id.*). In 2007, Citroen and Csipkes formed Technica, S.A.  
16 (“Technica”) to manufacture optical products and components for Micron in China, and  
17 Technica’s stock was held equally by Metallikon and K&B until 2014. (*Id.* ¶ 20). Citroen failed  
18 to disclose his or Csipkes’s interests in Technica to Micron’s officers, directors, or shareholders.  
19 (*Id.* ¶ 21). Technica profited from its relation with Micron and distributed those profits to its  
20 shareholders Metallikon and K&B. (*Id.* ¶ 21). As owner or controller of Metallikon, a  
21 shareholder of Technica, Citroen profited when Technica did while also serving as a director of  
22 Micron as well as its legal counsel. (*Id.*). Metallikon and K&B transferred their interests in  
23 Technica to other entities in July 2014. (*Id.* ¶ 20).

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1           **2. Citroen’s Federal Convictions**

2           Citroen was a member of the State Bar of California from 1978 until he voluntarily  
3 resigned in 2008 two months before pleading guilty to federal crimes related to passport fraud.  
4 (*Id.* ¶¶ 9, 22–26). Citroen failed to disclose his convictions to Micron’s officers, directors, or  
5 shareholders, and he continued to provide legal advice to Micron and to charge it for those  
6 services, totaling \$132,233.70. (*Id.* ¶¶ 25–29).

7           **3. The Agreement**

8           On or about April 1, 2014 Micron entered into the Agreement with Metallikon and K&B  
9 under which the latter entities would sell their MOIAG stock to Micron for \$100,000. (*Id.* ¶ 32).  
10 The Agreement also represented the settlement of a purported debt owed by MOIAG to S.A. des  
11 Establissements Karoly (“SADEK”) for various services. (*Id.* ¶ 33). Under the Agreement,  
12 Micron would assume a settled amount of \$500,000 in debt to SADEK, payable in quarterly  
13 installments of \$12,500. (*Id.*). The same day, SADEK assigned its interest in the Agreement to  
14 RLC (“the Assignment”), acknowledging that RLC, as SADEK’s subcontractor, had provided  
15 the most vital services to MOIAG. (*Id.* ¶ 34). “In other words, the purported obligation and debt  
16 owed by MOIAG (operated by Csipkes and Citroen) to SADEK, which supposedly resulted from  
17 services performed by [RLC], was passed along as a debt and obligation to Micron.” (*Id.* ¶ 35).  
18 Citroen failed to disclose his and RLC’s interests in the Agreement to Micron’s directors or  
19 shareholders. (*Id.* ¶¶ 36–37). Micron made seven quarterly payments under the Agreement but  
20 stopped making payments after March 2016 when it discovered Citroen’s 2008 resignation from  
21 the State Bar of California, his federal convictions, and his control, ownership, and/or financial  
22 interests in Metallikon, MOIAG, and Technica, none of which he had previously disclosed. (*Id.*  
23 ¶¶ 39–41).

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1           **C. Procedural History**

2           RLC sued Micron in state court for breach of contract, unjust enrichment, conversion,  
3 anticipatory breach, and misrepresentation. Micron removed, answered, and filed counterclaims  
4 against RLC for breach of contract, contractual and tortious breach of the implied covenant of  
5 good faith and fair dealing, unjust enrichment, breach of fiduciary duty, fraud in the inducement,  
6 and constructive fraud. Micron also listed counterclaims against Citroen in his personal capacity  
7 for tortious breach of the implied covenant of good faith and fair dealing, unjust enrichment,  
8 breach of fiduciary duty, fraud in the inducement, constructive fraud, and aiding and abetting  
9 fraud. RLC answered the Counterclaim and asked the Court to dismiss the counterclaims  
10 brought against Citroen in his personal capacity. The Court denied the motion, ruling that  
11 although Citroen was not a necessary party under Rule 19, he could be permissively joined as a  
12 Counterdefendant under Rule 20. RLC moved for partial offensive summary judgment on the  
13 issue of liability for breach of contract, or, in the alternative, for a ruling that it is subject only to  
14 contractual defenses that would have been valid if asserted by Micron against MOIAG but not  
15 those defenses that can only be asserted against RLC. The Court granted the motion in part,  
16 ruling that Micron breached the Agreement, but denying the motion without prejudice as to  
17 affirmative defenses. Micron has now moved for offensive summary judgment on its  
18 counterclaims and its affirmative defense of rescission, and RLC has moved for summary  
19 judgment against the Counterclaim.

20           **II. SUMMARY JUDGMENT STANDARDS**

21           A court must grant summary judgment when “the movant shows that there is no genuine  
22 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.  
23 Civ. P. 56(a). Material facts are those which may affect the outcome of the case. *See Anderson*

1       *v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is genuine if  
2 there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *See*  
3 *id.* A principal purpose of summary judgment is “to isolate and dispose of factually unsupported  
4 claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

5           In determining summary judgment, a court uses a burden-shifting scheme. The moving  
6 party must first satisfy its initial burden. “When the party moving for summary judgment would  
7 bear the burden of proof at trial, it must come forward with evidence which would entitle it to a  
8 directed verdict if the evidence went uncontested at trial.” *C.A.R. Transp. Brokerage Co. v.*  
9 *Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citation and internal quotation marks  
10 omitted). In contrast, when the nonmoving party bears the burden of proving the claim or  
11 defense, the moving party can meet its burden in two ways: (1) by presenting evidence to negate  
12 an essential element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving  
13 party failed to make a showing sufficient to establish an element essential to that party’s case on  
14 which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24.

15           If the moving party fails to meet its initial burden, summary judgment must be denied and  
16 the court need not consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*,  
17 398 U.S. 144 (1970). If the moving party meets its initial burden, the burden then shifts to the  
18 opposing party to establish a genuine issue of material fact. *See Matsushita Elec. Indus. Co. v.*  
19 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,  
20 the opposing party need not establish a material issue of fact conclusively in its favor. It is  
21 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the  
22 parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*  
23 *Ass’n*, 809 F.2d 626, 631 (9th Cir. 1987). In other words, the nonmoving party cannot avoid  
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1 summary judgment by relying solely on conclusory allegations unsupported by facts. *See Taylor*  
2 *v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go beyond the  
3 assertions and allegations of the pleadings and set forth specific facts by producing competent  
4 evidence that shows a genuine issue for trial. *See Fed. R. Civ. P.* 56(e); *Celotex Corp.*, 477 U.S.  
5 at 324.

6 At the summary judgment stage, a court’s function is not to weigh the evidence and  
7 determine the truth, but to determine whether there is a genuine issue for trial. *See Anderson*, 477  
8 U.S. at 249. The evidence of the nonmovant is “to be believed, and all justifiable inferences are  
9 to be drawn in his favor.” *Id.* at 255. But if the evidence of the nonmoving party is merely  
10 colorable or is not significantly probative, summary judgment may be granted. *See id.* at 249–50.  
11 Notably, facts are only viewed in the light most favorable to the nonmoving party where there is  
12 a genuine dispute about those facts. *Scott v. Harris*, 550 U.S. 372, 380 (2007). That is, even if  
13 the underlying claim contains a reasonableness test, where a party’s evidence is so clearly  
14 contradicted by the record as a whole that no reasonable jury could believe it, “a court should not  
15 adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Id.*

### 16 III. ANALYSIS

#### 17 A. Micron’s Affirmative Defense of Rescission and Counterclaims

##### 18 1. Rescission

19 Under Nevada contract law, a trial court has discretion to rescind a contract, *Awada v.*  
20 *Shuffle Master, Inc.*, 173 P.3d 707, 713 & n.28 (Nev. 2007) (citing *Havas v. Alger*, 461 P.2d 857,  
21 860 (Nev. 1969)), and one basis for rescission is fraud in the inducement, *id.* at 713 n.29 (citing  
22 *Havas*, 461 P.3d at 859). To establish fraud in the inducement, one must prove by clear and  
23 convincing evidence: (1) a false representation; (2) knowledge or belief that the representation  
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1 was false (or knowledge that it had an insufficient basis for making the representation); (3) intent  
2 to induce consent to the agreement; (4) justifiable reliance upon the misrepresentation; and (5)  
3 resulting damage. *J.A. Jones Constr. v. Lehrer McGovern Bovis*, 89 P.3d 1009, 1018 (Nev.  
4 2004).

5 Most of Micron's motion consists of twenty-five pages of extraordinarily confusing  
6 allegations concerning Citroen's, former Micron CEO Jeff Miller's, and former Micron COO  
7 Andrei Csipkes's activities related to various entities. Only some of the allegations are relevant  
8 to the claims at issue in the case, and it is difficult to sort through them. The allegations and  
9 supporting evidence are so confusing that the Court is tempted to deny summary judgment on  
10 that basis alone, but the Court will do its best to parse the motion and evidence submitted.

11 As relevant to the fraud defense, Micron argues that RLC (through Citroen) fraudulently  
12 concealed Citroen's, Csipkes's, and Miller's personal financial interests in MOIAG and related  
13 entities, and that Micron justifiably relied when it approved the Agreement, under which Micron  
14 purchased Metallikon's and K&B's MOIAG stock for \$100,000 and assumed \$500,000 in debt  
15 to SADEK. Most importantly, Micron argues that had it known Citroen, it's former attorney and  
16 director, in fact owned or controlled Metallikon and was to be the immediate assignee of  
17 SADEK's right to receive \$500,000 under the Agreement, it would not have entered into the  
18 Agreement. The Court rejects this theory. Micron does not appear to dispute that Citroen had  
19 not been its attorney or director for over two years when Micron entered into the Agreement in  
20 2014. Citroen therefore had no affirmative duty in April 2014, either as an attorney or director,  
21 to reveal his interest in the Agreement to Micron lest the failure to do so constitute fraud by  
22 omission. Micron also appears to argue that Citroen directed Miller and/or Csipkes to conceal  
23 Citroen's interest in the Agreement. But Micron must sue Miller and/or Csipkes for their alleged  
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1 fraud, not Citroen, who owed no duty to Micron at the time of these alleged activities. The Court  
2 denies summary judgment on the affirmative defense of fraud in the inducement. This issue is  
3 much too uncertain for summary judgment based on the facts adduced and must be tried to a  
4 jury.

5           **2. Breach of Contract**

6           Micron alleges RLC violated a contract to provide legal services because between 2008  
7 (when Citroen voluntarily resigned his bar membership) and 2011 (when Citroen resigned as a  
8 director of Micron and stopped providing those services), Micron paid him for legal services  
9 when he had no license. Micron has adduced evidence showing that in 2008, Citroen was  
10 convicted of possessing false identification documents in violation of 18 U.S.C. § 1028(a)(3) and  
11 making false statements in violation of 18 U.S.C. § 1001(a)(2), (Judgment of Conviction, ECF  
12 No. 73-6), had his voluntarily resignation of bar membership accepted that year, (Order,  
13 Supreme Court of Cal. Case No. 07-W-14821, ECF No. 73-7), and did not reveal his convictions  
14 to anyone at Micron until 2016, (Citroen Dep. 78:14–17, ECF No. 73-3). Micron paid RLC  
15 \$132,223.70 for legal services while Citroen was not a licensed attorney. (Dillard Decl. ¶ 13,  
16 ECF No. 47; RLC Invoices and Micron Payment Records, ECF No. 52).

17           Counterdefendants argue in response that there was never any contract to provide legal  
18 services after January 11, 2008, but only “marketing and business advice.” But the invoices  
19 from RLC adduced clearly use the letterhead “ROBERT L. CITROËN LAW CORPORATION”  
20 during the entire relevant period. (RLC Invoices, ECF No. 52). A reasonable jury could not find  
21 that Micron did not think or should not have thought it was paying for the services of a licensed  
22 attorney based on this evidence. Regardless of the existence of any separate written agreement,  
23 and absent any evidence that the client knew otherwise, routine periodic billings for business  
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1 advice from a “LAW CORPORATION” implies a term of agreement that the services are being  
2 provided by a licensed attorney. Micron is entitled to offensive summary judgment on its  
3 counterclaim for breach of contract.

4       **3. Breach of the Implied Covenant of Good Faith and Fair Dealing and Breach**  
5       **of Fiduciary Duty**

6       Micron alleges RLC breached its implied duty of good faith under its contract to provide  
7 legal services to Micron by failing to notify Micron that Citroen had lost his law license and for  
8 other reasons. Micron brings the claim in contract and in tort. The contractual bad faith claim is  
9 moot given the victory on the breach of contract claim. The tortious bad faith claim is not moot,  
10 although it is redundant with the breach of fiduciary duty claim. The Court must simply sort out  
11 precisely which standard applies in the present situation: the duty of loyalty owed by corporate  
12 directors, *see Shoen v. SAC Holding Corp.*, 137 P.3d 1171, 1184 & n.60 (Nev. 2006) (citing Nev.  
13 Rev. Stat. § 78.138(7)) (“[D]irectors and officers may only be found personally liable for  
14 breaching their fiduciary duty of loyalty if that breach involves intentional misconduct, fraud, or  
15 a knowing violation of the law.”), the duty owed by parties to contracts in special relationships,  
16 *see, e.g., Allstate Ins. Co. v. Miller*, 212 P.3d 318 (Nev. 2009), or some other standard.

17       In its motion, Micron argues only the fiduciary duty issue, and the Court agrees that is the  
18 proper standard. The Court finds there to be no genuine issue of material fact that the provision  
19 of (and billing for) legal services to a corporation by one of its directors while that director is not  
20 a licensed attorney is misconduct and a knowing violation of the law, as well as fraud where the  
21 fact of a lack of a license to practice law is concealed, as here. Micron is entitled to offensive  
22 summary judgment on the breach of fiduciary duty claim. This is not redundant with the breach  
23 of contract claim, because the present claim potentially permits punitive damages, whereas the  
24 breach of contract claim does not. *See* Nev. Rev. Stat. § 42.005(1).

1           **4.       Unjust Enrichment**

2           Micron does not appear to bring this counterclaim as an alternative to its breach of  
3 contract counterclaim based on legal services provided by RLC. Rather, the counterclaim is  
4 brought as an alternative to the fraud-type counterclaims based on the Agreement and  
5 Assignment. Micron is not entitled to summary judgment on this claim. Indeed, the claim is  
6 subject to dismissal, although Counterdefendants have not asked the Court to dismiss it, so the  
7 Court will not do so at this time. Micron does not allege that it bestowed a benefit on RLC or  
8 Citroen that in equity should be returned. *See Leasepartners Corp., Inc. v. Robert L. Brooks Tr.*,  
9 942 P.2d 182, 187 (Nev. 1997) (citing *Unionamerica v. McDonald*, 626 P.2d 1272, 1273 (Nev.  
10 1981) (citing *Dass v. Epplen*, 424 P.2d 779, 780 (Colo. 1967))). Micron does not allege RLC or  
11 Citroen were parties to the Agreement or that Micron was a party to the Assignment. Nor does it  
12 allege it received nothing of fair value under the Agreement. This claim sounds in fraud, which  
13 is addressed elsewhere.

14           **5.       Fraud in the Inducement, Constructive Fraud, and Aiding and Abetting**

15           As with the parallel affirmative defense, Micron is not entitled to summary judgment on  
16 these counterclaims with respect to Micron's entry into the Agreement. Insofar as the  
17 counterclaims are based on payment for legal services to a non-lawyer, they are redundant with  
18 the breach of contract and breach of fiduciary duty counterclaims.

19           **B.       Counterdefendants' Motion for Summary Judgment**

20           Counterdefendants argue that Citroen's participation in the creation of MOIAG in 2004,  
21 the operation of MOIAG from 2004 to 2014, and Micron's acquisition of MOIAG in 2014 were  
22 protected by the business judgment rule and therefore cannot be the basis of any claims against  
23 Citroen. The Court denies the motion. Those statements may or may not be true, but the Court

simply has no occasion to rule on them. Micron’s counterclaims are not based on any alleged usurpation of corporate opportunities, as implied by Counterdefendants’ motion. They are based on alleged fraud, an alleged breach of a contract to provide legal services, and the alleged breach of fiduciary duty. And, as noted *supra* in the context of Micron’s counterclaim for breach of fiduciary duty, there is no genuine issue of material fact that Counterdefendants’ continued billing of Micron for legal services after Citroen no longer had a law license was not protected by the business judgment rule.

## CONCLUSION

9 IT IS HEREBY ORDERED that the Motion for Summary Judgment (ECF No. 73) is  
10 GRANTED IN PART and DENIED IN PART. Micron is entitled to offensive summary  
11 judgment on its counterclaims for breach of contract and breach of fiduciary duty. The  
12 counterclaim for contractual bad faith is moot. The fraud-based counterclaims and the  
13 affirmative defense of fraud in the inducement, as well as damages on the breach of contract and  
14 breach of fiduciary duty claims, remain for a jury.

15 IT IS FURTHER ORDERED that the Motion for Summary Judgment (ECF No. 76) is  
16 DENIED, and the Clerk shall correct the docket to reflect that ECF No. 77 is not a motion.

IT IS SO ORDERED.

18 | Dated this 17th day of May, 2018.

ROBERT C. JONES  
United States District Judge